S.B. CIVIL WRIT PETITION NO.5872/2005

Nena Ram
vs.
Shiv Raj & Ors.

Date :: 03.03.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.P.P. Choudhary, for the petitioner.
Mr.I.R. Choudhary]
Mr.V.S. Choudhary] for the respondents.

Heard learned counsel for the petitioner.

The petitioner Nena Ram is facing an election petition filed by the respondent No.1 Shiv Raj in relation to the Panchayat Elections held on 31st January 2005. The petition has been submitted on various grounds as does it appear from a copy of the application Annexure-P/1 produced on record by the petitioner. It appears that 11 issues were framed by the learned trial court.

After framing of the issues, the petitioner moved an application under Order 14 Rule 2 read with Section 151 CPC (Annexure-P/3) and it was contended that the amended issues No.5 to 11 were essentially legal issues and no additional evidence was required. The petitioner further submitted in relation to issues No.5 to 8 that

they were purely legal issues and that issue No.8 was related only to the jurisdiction of the Court and such issues were required to be decided at the first before evidence so that the parties are not required to go through the long drawn court proceedings in trial. After hearing arguments on the said application under Order 14 Rule 2 read with Section 151 CPC, the learned trial court proceeded to pass an order on 14.09.2005 (Annexure-P/5) that is assailed in this writ petition.

In the impugned order dated 14.09.2005 the learned Judge observed that arguments were heard in relation to the application and so also in relation to the said issues and then proceed first of all to consider as to whether issues No.5 to 8 were legal issues or not? The learned Judge observed for issue No.5 that the same related to the question of limitation and the election petition in relation to the election held on 31st January 2005 was filed on 01st March 2005 and prima facie the petition did not appear to be barred by limitation. The learned Judge, however, observed that this was an issue involving mixed questions of law and facts, and it was not purely a legal issue. In relation to issue No.6, it was observed that the same related to the cause of action and it was also a factual question and cannot be said to be purely a legal issue. It was further observed that the questions regarding verification, the effect of not filing affidavits in support of petition and copy of the petition having not been sent by registered

post to the Collector, Nagaur, were all the questions of facts and, therefore, issues No.5 to 7 were not purely legal issues and there was no necessity to consider them as preliminary issues.

The learned Judge thereafter took up for consideration issue No.8 relating to the question of jurisdiction of Civil Judge (Senior Division), Merta City to deal with the election petition; and with reference to Section 43 of the Rajasthan Panchayati Raj Act, 1994 found that the petition was transferred to the said court by the District Judge and the court has the jurisdiction to proceed with the trial of the election petition and the said issue No.8 was decided accordingly.

The learned Judge, in the same order recorded that the statements of AW-1 Shiv Raj were completed and the applicant was not interested in adducing any other evidence and, therefore, the case was fixed for evidence of the non-applicant i.e. the petitioner.

Assailing the order aforesaid, learned counsel Mr. P.P. Choudhary appearing for the petitioner, has strenuously contended that the legal issues are required to be decided with reference to Order 14 Rule 2 CPC and the learned trial court was seriously in error in not deciding purely legal issues like that of limitation, the form and validity of the petition as filed and so also the question of

cause of action as preliminary issues. Learned counsel read out the entire order Annexure-P/5 and emphatically contended that in the said order of course various findings have been recorded and observations have been made, but precisely, no decision has been rendered in relation to the application submitted by the petitioner (Annexure-P/2) and the impugned order cannot be said to be a valid exercise of jurisdiction by the Court, inasmuch as, despite recording findings, the court below has left the application in a lurch without stating as to whether the application was being allowed or rejected and such an order discloses an error apparent on the face of the record and, therefore, deserves to be set aside.

Having given thoughtful consideration to the submissions made by the learned counsel for the petitioner, this Court is clearly of the opinion that this writ petition remains totally devoid of substance and deserves to be dismissed.

The submission that legal issues are required to be decided as preliminary issues with reference to Order 14 Rule 2 CPC remains inapt, so far the subject matter of this writ petition and the impugned order are concerned. Provisions of Order 14 Rule 2 CPC envisage that where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law, it may try that issue first if that issue

relates to the jurisdiction of the Court, or a bar to the suit created by any law for the time in force. Issues No.5,6 and 7 relate to the question of limitation, cause of action and compliance of the requirements of Rules in the petition respectively, and the learned Judge has specifically found that the petition did not appear to be barred by limitation and all other aspects of the matter involved in these issues were mixed questions of law and facts and there was no necessity of deciding these issues at the first.

Having regard to the requirements of the provisions of Order 14 Rule 2 CPC, when the learned trial court has found that such issues are mixed questions of law and facts and they do not appear to be pure questions of law, the trial court cannot be said to have acted illegally or with material irregularity in not deciding these issues as preliminary issues.

Learned counsel Mr. P.P. Choudhary emphatically contended that the learned Judge has not pronounced anything in relation to the result of the application and the impugned order does not disclose as to whether the application was granted or rejected. This submission remains at the extreme end of hyper-technicalities. The learned trial Judge has specifically pronounced the decision in relation to the request of the petitioner. So far issues No.5 to 7 were concerned, it has been observed that:-

> "इस प्रकार तनकी क्रम. 5 से 7 पूर्णरूपेण विधिक तनकियात नहीं है वरन् इन तनकियात मे विधि और तथ्यों का समिश्रण है। अत: इनके सम्बन्ध में पहिले बतौर प्राथमिक तनकियात सुनवाई किए जाने की आवश्यकता प्रतीत नहीं होती।"

It has, therefore, been specific rejection of the prayer for hearing and pronouncing judgment on issues No.5 to 7 at the first.

It is more than clear from the impugned order itself that the learned Judge has proceeded squarely in conformity with law and took up for consideration issue No.8 relating to the question of jurisdiction in the impugned order itself and to that extent the prayer made in the application for taking up the legal issues at the first, stood granted, inasmuch as, issue No.8 was not only taken up for consideration, but moreover, the said issue No.8 itself has precisely been decided, albeit by the same order. With the conclusion on issue No.8 and observations on issues No.5 to 7, the application submitted by the petitioner for taking up these issues as preliminary issues stood specifically disposed of, inasmuch as, it was denied in relation to issues No.5 to 7; and was granted in relation to issue No.8 that was heard and decided against the petitioner by the same order.

The learned trial court has rightly adopted the procedure and has rightly recorded the evidence of the applicant on that very date and fixed the matter for recording non-applicant's evidence on the

next date of hearing.

This writ petition remains totally devoid of substance and is, therefore, dismissed. However, there shall be no order as to costs.

[DINESH MAHESHWARI],J.

Ashwini/-